

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIASIERRA CLUB, et al.,  
Plaintiffs,

v.

ENVIRONMENTAL PROTECTION  
AGENCY,  
Defendant.Case No. [22-cv-02302-RS](#)**SCHEDULING ORDER**

As noted in a prior order, this action seeks to compel the Administrator of the United States Environmental Protection Agency to take certain action allegedly mandated by the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*—specifically, plaintiffs contend EPA has missed a January 31, 2022, deadline to make a finding as to which states are not in compliance with their obligations to submit plans for addressing regional haze that impairs visibility in national parks and wilderness areas.

Prior to the filing of this action, EPA had announced its intent to issue the compliance determination by August 31, 2022. Plaintiffs filed this action in April, and a month later filed a motion for summary judgment. EPA moved to delay its obligation to respond to the complaint and the motion for summary judgment until September 1st, contending the action likely would be moot by then.

An order issued suspending briefing on the summary judgment motion, but not relieving EPA from filing an answer. The order indicated that resetting a briefing schedule and hearing date

1 for the motion for summary judgment could be discussed at the Case Management Conference, “in  
2 light of such circumstances as may exist at that time.”

3 The parties have now filed their joint Case Management Conference statement and report  
4 agreement that this action can be decided on cross-motions for summary judgment, without  
5 discovery. The EPA asserts it remains “on track” to issue the compliance determination by August  
6 31st. Although the parties dispute which side will have the burden to show mootness or the  
7 existence of a continuing justiciable controversy if that happens, plaintiffs have not suggested any  
8 reason the case would *not* be moot at that point. Indeed, the parties *jointly* assert they “anticipate  
9 that the only legal dispute will be the appropriate remedy--the time for EPA to complete its  
10 mandatory duty.”

11 EPA repeats its prior request that it not be obligated to file a response to the motion for  
12 summary judgment until September 1st. Plaintiffs insist EPA should be required to respond  
13 at the earliest possible date, but no later than July 21st. Plaintiffs contend EPA has no lawful or  
14 factual basis for delaying the required determination until August 31st, when the agency has  
15 known which states missed the July 31, 2021, deadline for submitting plans for nearly a year. EPA  
16 asserts the August 31st date was chosen after consultation with a number of states that intend to  
17 submit plans, some of which were near finalization.

18 It appears the EPA effectively has given itself, and states, an extension of several extra  
19 months beyond what the regulations provide. Nothing in this order should be seen as an  
20 endorsement of that approach. As a practical matter, however, the timing is such that it would be a  
21 poor use of court and party resources to proceed with briefing of the summary judgment motion  
22 when there is a strong possibility the issue will be moot before any judicial relief would likely take  
23 effect.

24 Plaintiffs’ concern that the EPA might continue to give itself and the states extensions can  
25 be addressed by setting the EPA’s deadline for responding to the motion for summary judgment  
26 on September 1st. Assuming the EPA’s duty to act is as clear cut as plaintiffs contend, they will be  
27 able to get prompt relief in the event the EPA breaks its promise to issue the determination by  
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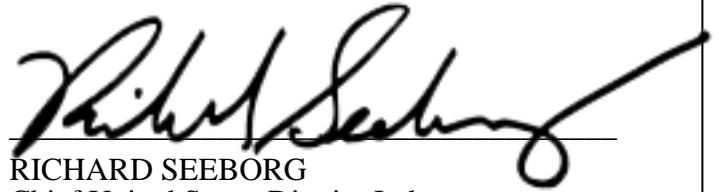
1 August 31st.

2 Accordingly, no later than September 1, 2022, the EPA shall file a response to the motion  
3 for summary judgment. Within one week thereafter, plaintiffs shall file a reply—or, if the parties  
4 agree the case has become moot, a dismissal. If the briefing indicates there is still an issue to be  
5 resolved, the matter will either be deemed submitted, or set for hearing, in the court’s discretion.

6 Because it is the court’s practice always to have a further proceeding on calendar, the Case  
7 Management Conference is continued to December 1, 2022. The current expectation, however, is  
8 that the case will be resolved one way or another prior to that time.

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10 **IT IS SO ORDERED.**

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12 Dated: July 11, 2022

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15 RICHARD SEEBORG  
16 Chief United States District Judge  
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